

REQUEST FOR PROPOSALS (RFP)
FOR
DESIGN OF
WINGATE PARK REGIONAL EWMP PROJECT
735 N GLENDORA, COVINA, CA 91723

RFP 2020-01



CITY OF COVINA
ENGINEERING DIVISION
125 E. COLLEGE STREET
COVINA, CA 91723

Proposal shall be delivered no later than 10:00 a.m. August 31st, 2020, at:

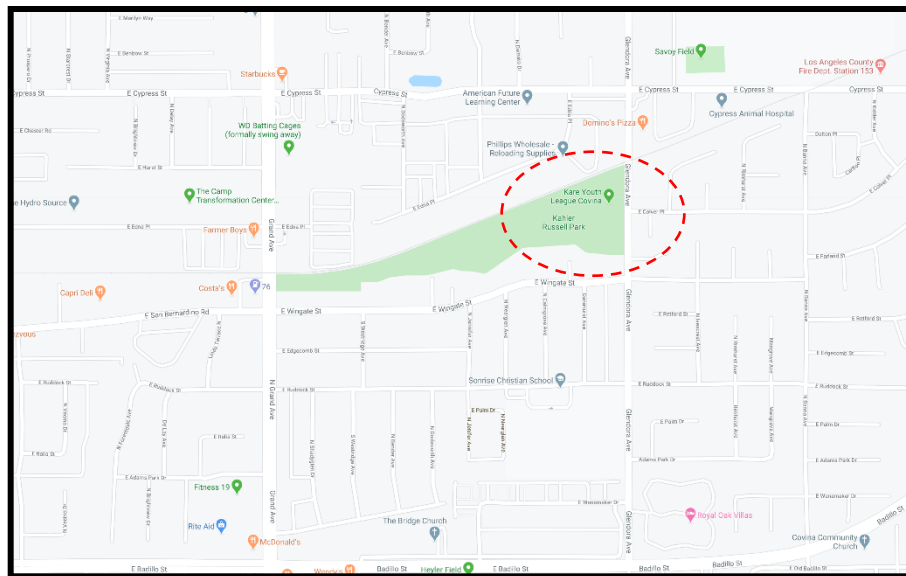
CITY OF COVINA
City Clerk Office
125 E College Street
Covina, CA 91723
Attn.: Rafael M. Fajardo
City Engineer



**CITY OF COVINA
PUBLIC WORKS/ENGINEERING DIVISION
REQUEST FOR PROPOSALS FOR PROFESSIONAL ENGINEERING SERVICES
WINGATE REGIONAL EWMP PROJECT
735 N GLENDORA, COVINA CA 91723**

Section 1.01 INTRODUCTION

The City of Covina is requesting proposals from qualified professional engineering firms to provide engineering services for Wingate Park Regional EWMP Project. The engineering services desired include, but are not limited to, final design (based on previously completed 30% design, prepared by Tetra Tech in November 2018) see Appendix of a stormwater infiltration chamber and aboveground park enhancements, specifications and a cost estimate for construction of Wingate Park Regional EWMP Project.



BACKGROUND:

The City of Covina, incorporated in 1901, covers approximately seven square miles located in the San Gabriel Valley area of Los Angeles County, approximately 22 miles east of Downtown Los Angeles. The City is responsible for maintaining 34 miles of arterial roadways, 82 miles of residential roadways, 240 miles of curb and gutter, 694 catch basins and over 1 million square feet of sidewalk.

The proposed project will capture, treat and infiltrate approximately 1,100 acres stormwater from various land uses within the cities of Covina (35%), Glendora (20%) and San Dimas (11%) as well the surrounding unincorporated LA County (34%). The facility will be located under an open playing field and parking lot on the eastern portion of Wingate Park, located at 734 N Glendora, Covina CA. A diversion structure on the LACFCD Cienega Glendora Drain would divert stormwater from the Charter Oak Wash into a pre-treatment device before being gravity fed into an underground gallery. Once stormwater fills the chamber, an actuated valve would close and stormwater would continue to flow into the Charter Oak Wash located on the southern portion of Wingate Park. The goal of this project is to treat, capture and infiltrate approximately 658 AF of wet and dry weather flows.

This project was included in the Upper San Gabriel River Enhanced Watershed Management Plan (EWMP) prepared in June 2015 (revised January 2016). The selection of Wingate Park (formerly Kahler Russel Park) as one of eight regional projects was based on an extensive screening process with coordination of the USGR EWMP group. The project has been presented to the USGR IRWMP group and approved for inclusion in the USGR IRWMP Plan. A programmatic Environmental Impact Report (PEIR) was certified by the Los Angeles County Board of Supervisors on May 26, 2015. A Feasibility Study which included 30% Preliminary Design for the Upper San Gabriel River EWMP group that included the Wingate Park Regional EWMP project was completed by Tetra Tech, on November 14, 2018. The Feasibility Study included a review of existing site conditions, regional structural BMP Design components, long-term monitoring plan, preliminary schedule and costs (since revised for the SCW application), Regulatory and permitting evaluation, site and landscaping plans, Phase 1 environmental site assessment and preliminary Initial Study. Geotechnical investigation and infiltration testing reports were also conducted and are found in the appendices of the Feasibility Study.

Section 1.02 SCOPE OF SERVICES

The following is a general outline of the scope of work to be provided by the consultant. While it is intended that the following scope of work include all elements essential to Prepare construction plans for the project, those submitting proposals are advised to perform their own field reconnaissance and include any items which they feel have been overlooked. The consultant may also note any required items which they feel to be excessive or unnecessary. The description and cost of such items should be noted separately in the proposal. Services required to complete this project by the consultant shall include:

1. PROJECT ADMINISTRATION AND COORDINATION

- Kick-off Meeting (Video or Conference Call) – Upon receipt of a written notice to proceed from the City, consultant shall conduct a kick-off meeting with the City staff to review the scope of the project, prepare construction plans for a project schedule and confirm deliverables.
- Coordination – The consultant shall be responsible for the coordination with all utilities company affected by this improvement.
- Monthly meetings (Video or Conference Call)– Consultant shall schedule a monthly meeting with City staff.

2. GEOTHECNICAL REPORT

- Review of the May 1, 2018 Geotechnical investigation at Wingate Park completed by the Geotechnical and Materials Engineering Division at LA County Public Works and the June 2015 report based upon the geotechnical investigation performed by Ninyo & Moore Geotechnical Services and Cone Penetration Tests (CPTs) and hollow-stem borings performed by Gregg Drilling.
- Assess if additional deep borings are required to collect additional data for the final design report.

3. TOPOGRAPHIC SURVEY

- Prepared by Tetra Tech see attached report page 9.
- Assess if additional surveying is needed.

4. UTILITY DOCUMENTATION, ROW AND UTILITY RESEARCH

- Prepared by Tetra Tech see attached report page 10.

5. UTILITY DOCUMENTATION, ROW AND UTILITY RESEARCH

- A Programmatic Environmental Impact Report (PEIR) was certified by the Los Angeles County Board of Supervisors on May 26, 2015. Each individual watershed project is to prepare an environmental document tailored to the area in which the proposed project is to be sited. For Wingate Park (formerly Kahler Russel Park), a Phase One Environmental Assessment and Initial Study were prepared as part of the preliminary design report (PDR). In addition, a hydrology study (September 2016) that includes Wingate Park was prepared by the LA County Public Works Department, Water Resources Division. A geotechnical investigation for infiltration feasibility was also prepared in May 2018 and is included in the PDR.
- A Mitigated Negative Declaration is being prepared by the City's environmental consultant concurrently with Final Design.

6. DESIGN

- Prepare construction plans for Stormwater Capture Capacity and Conduct Water Quality Analysis to determine maximum potential drainage area that could be capture and meet water quality standards.
- Prepare construction plans for BMP size to achieve water quality standards for the project tributary area, size and to capture enough pollution concerns.
- Prepare construction plans for recommendations for the BMP location, type, size, pre-treatment and structures.
- Conduct hydrologic and hydraulic analysis using LACDPWs standards.
- Conduct Watershed Management Modeling System (WMMS2) latest edition and System for Urban Stormwater Treatment and Analysis Integration (SUSTAIN) to support the design of stormwater capture capacity.

- Water Conservation Analysis to determine the potential annual groundwater recharge volume associated with the project site.
- Consultant to obtain permits, including but not limited to local municipal and zoning code for parking lot and solar lighting requirements Los Angeles County Department of Public Health Guidelines for Alternate Water Sources, Indoor and Outdoor Non-Potable Use and others to make sure the design meet all the requirements.

7. LANDSCAPING AND AMENITIES

- Prepare landscape plans to restore vegetation impacted by this project including the soccer field amenities, lighting, irrigation, signage, incorporate above ground Low Impact Prepare construction plans (LID); prepare rendering plans for the final product.

8. OPERATION AND MAINTENANCE (O&M)

- Develop an O&M template to include frequency of maintenance, replacement and schedule of system components for a period of 20 years.

9. MONITORING PLAN

- Prepare a pre-project monitoring baseline plan to determine water quality improvements and water supply benefits.

10. COST ESTIMATE

- Prepare a construction cost estimate.

Each sheet of plans shall include the City of Covina title blocks and bear the professional seal, certificate number, registration classification, and expiration date of the professional responsible for their preparation. The signature of the responsible shall be included on final submittals.

Plans submittals shall be 70%, 90% and 100%. Final plans shall be formatted for 24" x 36" min. plans. Final submittal shall include one set plotted on Mylar and electronic copies of the AutoCAD files complete.

Construction Support

- Attending pre-construction meeting.
- Responding to Request for Information (RFI) on the design plans or in the special provisions. ***(Note: Consultant shall be required to provide responses to contractors' inquiries clarifying any errors, discrepancies, missing information, and oversights in the PS&E during the construction period at no cost to the City. This may involve revising the plans and specifications as necessary to appropriately respond to the inquiries. Consultant shall provide responses within two (2) working days after receiving the initial inquiry.)***

- Providing field visits during construction.
- Prepare As-Built Plans.

PROPOSAL FORMAT

Work Proposals shall be concise, well-organized and demonstrate the consultant's qualifications and experience relating to the proposed project. The Cost Proposal shall reflect all costs associated with the proposed project. At minimum, proposals shall include the following information:

A. The Work Proposal (envelope #1 – submit 3 copies)

The Work Proposal should include, as a minimum, the following information, presented in a clear and concise manner:

- Work Plan:** A statement of your understanding of the project and a detailed description of your approach to implement all of the tasks listed under Section 5, "Scope of Services."
- Organizational Chart:** A chart identifying the key personnel assigned to the project. Identify the name of the project manager and the individual authorized to negotiate the contract on behalf of the consulting firm. Include the work load of the project manager and key team members, as well as their availability to complete the tasks.
- Project Schedule and Deadlines:** A comprehensive schedule for the completion of the tasks. Indicate the time frame or period for each task and a total time for completion.
- Firm Qualifications:** Identify a minimum of three (3) similar projects completed within the past five (7) years.
- Objections to Professional Services Agreement:** Objections shall be submitted in writing with justification clearly stated. Any consultant with objections to terms contained in the City's Professional Services Agreement (Attachment A) must advise the City of such objections and requested modifications as part of its Work Proposal. Failure of a proposer to accept the terms of the City's Professional Services Agreement may result in the rejection of the proposal. It shall be the responsibility of the prospective consultant to review all sections and exhibits of the Professional Services Agreement, including insurance requirements. If no objections are received, the City will assume the proposer is able to and will enter into the Professional Services Agreement and fulfill the terms and requirements set therein. The City may recover any damages accruing to the City as a result of the successful consultant's failure or refusal to execute the City's Professional Services Agreement.

B. The Cost Proposal (envelope #2 – submit 1 copy)

The Cost Proposal should include a comprehensive summation of fees for the tasks described in the "Scope of Services," organized as follows:

- i. **Cost Proposal:** The Cost Proposal shall be organized within a task-by-task schedule that includes the following details:
 - a. Time estimates for principals, staff, sub-consultants, etc. with hourly billing rates.
 - b. Cost for materials and incidental services, including travel expenses, copying, printing, and plotting. Any proposed percentage mark-up for reimbursable expenses.
 - c. Total cost per task.
 - d. The cost proposal grand total shall be an amount "Not-to-Exceed."
- ii. **Hourly Rate Schedule:** A statement of hourly rates for all proposed staff classifications, including hourly rates for sub-consultants.

1. Inquiries and Addenda

For inquiries regarding this RFP, please contact Sharon Gallant, via electronic mail only at sgallant@covinaca.gov. Proposers must e-mail inquiries no later than 10:00 a.m. on August 20, 2020. Inquiries received after that date and time will not be answered.

The City will issue any revisions to this RFP as addenda. The City will distribute addenda to all potential proposers and post addenda on the City's website. Proposers are responsible for receipt of all addenda. Therefore, each proposer should contact the City to verify that he or she has received all addenda issued, if any. The City's issuance of a written addendum is the only official method whereby the City will interpret, clarify, or provide additional information concerning this RFP. No oral revisions to any provision in this RFP shall be binding.

2. Anticipated Schedule

| Milestone | Date |
|-------------------------------|-----------------------------|
| RFP Issued | August 3, 2020 |
| Deadline for Inquiries | August 20, 2020, 10:00 a.m. |
| Deadline for Proposals | August 31, 2020, 10:00 a.m. |
| Interviews | September 17, 2020 |
| Award | October 20, 2020 |
| Notice to Proceed (tentative) | October 21, 2020 |
| PS&E Completed | May 31, 2021 |

3. Evaluation Procedure

The Review Committee will evaluate each proposal for completeness and content. Each proposal will be evaluated based upon the relevant qualifications and experience of the proposer. The Review Committee may choose to interview two or more closely ranked firms, but will not expect or schedule elaborate presentations. License status and references will also be verified. The proposal review will focus on the following criteria:

- A. Project understanding/project approach (25 points).** The firm's proposal adequately demonstrates an understanding and experience in street rehabilitation, water, landscape, etc.
- B. Experience (25 points).** The firm's expertise and professional qualifications with similar work. Qualifications of the firm and the individuals assigned to perform the work.
- C. Project schedule (25 points).** Thoroughness of the project schedule; ability to complete the project within the selected timeframe.
- D. Proposal Fee (25 points).**

4. Professional Services Agreement

The City will identify the consultant that best meets the needs of the City and enter contract negotiations with that highest ranked firm. Should the City fail to reach agreement with the top ranked firm, the City may enter negotiations with the next highest rated consultant and so on. City Staff will make a recommendation to the City Council for the award of a Professional Services Agreement to the consultant that best furthers the City's objectives.

The successful consultant will be expected to execute the attached Professional Services Agreement (Attachment A) approximately fifteen (15) days prior to City Council consideration. A recommendation for contract award will be presented to the City Council for consideration on July 16, 2019 (tentative).

5. Insurance Requirements

The successful consultant shall secure all insurance required under the Professional Services Agreement and provide any necessary documentation to the City fifteen (15) days prior to City Council consideration.

6. Acceptance or Rejection of Proposal

The City reserves the right to accept, reject, or accept a portion of any and all proposals. The City also reserves the right to waive any informality or irregularity in any proposal or in the RFP as deemed to be in its best interest. Additionally, the City may, for any reason, decide not to award an agreement as a result of this RFP or cancel the RFP process. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by the submission of the proposal. The City reserves the right to negotiate project deliverables and associated costs.

7. Legal Responsibilities

All proposals must be submitted, filed, made, and executed in accordance with State and Federal laws related to proposals for contracts of this nature whether the same or expressly referred to herein or not. Any company submitting a proposal will by such action thereby agree to each and all of the terms, conditions, provisions, and requirements set forth, contemplated, and referred to in the RFP, and other contract documents, and to full compliance therewith.

8. Discrepancies and Misunderstandings

Contractors and consultants must satisfy themselves by personal examination of the worksite, specifications, and other contract documents and by any other means as they may believe necessary, as to the actual physical conditions, requirements, and difficulties under which the work must be performed. No contractor or consultant will at any time after submission of a proposal make any claim or assertion that there was any misunderstanding or lack of information regarding the nature or amount of work necessary for the satisfactory completion of the job. Any errors, omissions, or discrepancies called to the attention of the City will be clarified by the City in writing to all proposers prior to the submission of the proposals.

9. Proposer Interested in More than one Proposal

No person, firm, or corporation will be allowed to make or file, or be interested in more than one proposal for the same work unless alternate bids are called for. No proposal will be accepted from a consultant who has not been licensed in accordance with the provisions of the State Business and Professional Code.

Attachments:

Attachment A – City of Covina Professional Services Agreement

Attachment B – [See City Website Bids and RFPs for Supporting Documents](#)

ATTACHMENT A

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is dated October 20, 2020 (“Effective Date”) and is between the City of Covina, a California municipal corporation (“City”) and [Consultant’s Legal Name], a [Legal Form of Entity, e.g., California corporation, limited partnership, limited liability company] (“Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City desires to utilize the services of Consultant as an independent contractor to provide engineering design services for the Wingate Park Regional EWMP project.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Consultant and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The parties therefore agree as follows:

1. **Term of Agreement.** The term of this Agreement shall be from the Effective Date through May 31, 2021, unless sooner terminated as provided in Section 14 of this Agreement.

2. **Compensation.**

A. **Compensation.** As full compensation for Consultant’s services provided under this Agreement, City shall pay Consultant the total flat sum of [Written Amount] Dollars (\$[Numerical Amount]) (the “maximum compensation”), as set forth in the Approved Fee Schedule, attached hereto as Exhibit A. Any terms in Exhibit A, other than the payment rates and schedule of payment, are null and void.

B. **Expenses.** The amount set forth in paragraph A shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

C. **Additional Services.** City shall not allow any claims for additional services performed by Consultant, unless the City Council and the Consultant Representative authorize the additional services in writing prior to Consultant’s performance of the additional services or inurrence of additional expenses. Any additional services or expenses authorized by the City Council shall be compensated at the rates set forth in Exhibit A, or, if not specified, at a rate mutually agreed to by the parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

3. **Consultant’s Services.**

A. Scope of Services. Consultant shall perform the services described in the Scope of Services, attached as Exhibit B. City may request, in writing, changes in the scope of services to be performed. Any changes mutually agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the “City Representative”). For the purposes of this Agreement, the Consultant Representative shall be [Name], [Title] (the “Consultant Representative”). The Consultant Representative shall directly manage Consultant’s services under this Agreement. Consultant shall not change the Consultant Representative without City’s prior written consent.

C. Time for Performance. Consultant shall commence the services on the Effective Date and shall perform all services in conformance with the project timeline, attached hereto as Exhibit C.

D. Standard of Performance. Consultant shall perform all services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the services required under this Agreement. All of the services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant shall determine the means, methods, and details by which Consultant’s personnel will perform the services under this Agreement. Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the services and compliance with the customary professional standards.

F. Compliance with Laws. The Consultant shall keep itself informed of all local, state and federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City and its agents shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

G. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

4. Method of Payment.

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis or less frequently, for actual services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period, hourly rates charged, if applicable, and the amount

due. If City disputes any of Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

B. Payment. City shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in Section 2 of this Agreement. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant. For all reimbursements authorized by this Agreement, Consultant shall provide receipts on all reimbursable expenses in excess of Fifty Dollars (\$50) in such form as approved by the Finance Director.

C. Audit of Records. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this agreement available during Consultant's regular working hours to City for review and audit by City.

5. Ownership of Documents. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed ("written products") pursuant to this Agreement shall become the sole property of the City without restriction or limitation upon its use and may be used, reused, disseminated or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

6. Independent Contractor.

A. Consultant is, and shall at all times remain as to City, a wholly independent contractor and not an employee of City. The personnel performing the services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City. Consultant and Consultant's personnel shall not supervise any of City's employees; and City's employees shall not supervise Consultant's personnel. Consultant's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as an employee of City; and Consultant's personnel shall not use any City e-mail address or City telephone number in the performance of any of the services under this Agreement. Consultant shall acquire and maintain, at its sole cost and expense, such vehicles, equipment, and supplies as Consultant's personnel require to perform any of the services required by this Agreement. Consultant shall perform the services off of City premises at locations of Consultant's choice, except as otherwise may from time to time be necessary in order for Consultant's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Consultant's performance of the services

under this Agreement, or as may be necessary to inspect or visit City locations and/or private property to perform the services. City may make a computer available to Consultant from time to time for Consultant's personnel to obtain information about or to check on the status of projects pertaining to the services under this Agreement.

B. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder. Consultant shall be responsible for and pay all wages, salaries, benefits and other amounts due to Consultant's personnel in connection with their performance of the services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, state, or federal policy, rule, regulation, statute or ordinance to the contrary, Consultant and any of its officers, employees, agents, and subcontractors providing any of the services under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit or any incident of employment by City, including, but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") as an employee of City, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits.

C. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Consultant's personnel practices. or to the extent arising from, caused by, or relating to the violation of any of the provisions of this Section 6. In addition to all other remedies available under law, City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

7. PERS Compliance and Indemnification.

A. General Requirements. The parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Consultant agrees that, in providing its employees and any other personnel to City to perform the services under this Agreement, Consultant shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code Section 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Consultant shall assure compliance with regard

to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

B. Indemnification. Consultant shall defend (with legal counsel approved by City, whose approval shall not be unreasonably withheld), indemnify, and hold harmless City, and its City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Consultant's violation of any provisions of this Section 7. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

8. Confidentiality. All data, documents, discussion, or other information (collectively "data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential. Consultant shall keep all data confidential and shall not disclose any data to any person or entity without City's prior written consent. City shall grant such consent if disclosure is legally required. Consultant shall return all data to City upon the expiration or termination of this Agreement. Consultant's covenant under this Section 8 shall survive the expiration or termination of this Agreement.

9. Conflicts of Interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including the Political Reform Act (Gov. Code, § 81000 *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section 9 into any subcontract that Consultant executes in connection with the performance of this Agreement.

10. Indemnification.

A. Indemnity for Design Professional Services. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, protect, indemnify and hold harmless City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens and losses of any nature whatsoever, including fees of accountants, attorneys or other professionals, and all costs associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of Consultant, its officers, agents, servants, employees, subcontractors, material men, contractors or their officers,

agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a “design professional,” as the term is defined under California Civil Code Section 2782.8(c)(2).

B. Other Indemnities.

1) Other than in the performance of design professional services, and to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens and losses of any nature whatsoever, including fees of accountants, attorneys or other professionals, and all costs associated therewith, and the payment of all consequential damages (collectively “Claims”), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Claim with counsel of the Indemnitees’ choice, and shall pay all costs and expenses, including all attorneys’ fees and experts’ costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers’ compensation law regarding Consultant and Consultant’s employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers’ compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant’s failure to promptly pay to City any reimbursement or indemnification arising under this Subparagraph B. 2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnities, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant’s subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant’s subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive

negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties.

C. Workers' Compensation Acts not Limiting. Consultant's obligations under this Section 10, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

D. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provisions in this Section 10 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability, Claim, tax, assessment, penalty or interest asserted against City.

E. Survival of Terms. The indemnification in this Section 10 shall survive the expiration or termination of this Agreement.

11. Insurance.

A. Minimum Scope and Limits of Insurance. Consultant shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000) per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 11.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Consultant has no employees while performing services under this Agreement, workers' compensation policy is not required, but Consultant shall provide an executed declaration that it has no employees.

4) Professional Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000) per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 11 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 11.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming the City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 11 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section 11 shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be approved by City. At City's option, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section 11 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) calendar days' prior written notice to City. If any insurance policy required under this Section 11 is canceled or reduced in coverage or limits, Consultant shall, within two (2) business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section 11 in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section 11, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of services under this Agreement, Consultant shall furnish City's Risk Manager with a certificate or certificates of insurance and all

original endorsements evidencing and effecting the coverages required under this Section 11. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 10 of this Agreement.

K. Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 11.

12. Mutual Cooperation.

A. City's Cooperation. City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for Consultant's proper performance of the services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against the City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

13. Records and Inspections. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of Three (3) years. Consultant shall, without charge, provide City with access to the records during normal business hours. City may examine and audit the records and make transcripts therefrom, and inspect all program data, documents, proceedings and activities.

14. Termination or Suspension of Agreement.

A. Right to Terminate or Suspend. City may terminate or suspend this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least seven (7) calendar days before the termination or suspension is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least sixty (60) calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than

the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

15. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

16. Notices. Any notices, consents, requests, demands, bills, invoices, reports or other communications which either party may desire to give to the other party under this Agreement must be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by reputable document delivery service or courier service during Consultant's and City's regular business hours, or (c) five business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the party to be notified as set forth below:

If to City:
Attn: Public Works/Engineering Division
City of Covina
125 E. College Street
Covina, California 91723

If to Consultant:

17. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

18. Prohibition of Assignment and Delegation. Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 18 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 18, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this

Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

19. No Third Party Beneficiaries Intended. Except as otherwise provided in Section 10, this Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

20. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

21. Exhibits. Exhibits A, B, and C constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

22. Entire Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those expressly set forth in this Agreement.

23. Amendment of Agreement. This Agreement may be amended only by a writing signed by both parties. The City Manager is authorized to sign an amendment to this Agreement on the City Council's behalf and without the City Council's prior approval to make the following non-substantive modifications to the Agreement: (a) name changes; (b) extensions of time; (c) non-monetary changes in the scope of work; and (d) termination of the Agreement.

24. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties to this Agreement.

25. Word Usage. Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

26. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

27. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Covina.

28. Attorneys' Fees. In any litigation or other proceeding by which on party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

29. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

30. Authority to Execute Agreement. The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

[SIGNATURE PAGE FOLLOWS]

The parties, through their duly authorized representatives, are signing this Agreement on the date stated in the introductory clause.

City:

City of Covina,
a California municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: Georgianna Nicole Alvarez
Title: Chief Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Name: Candice K. Lee
Title: City Attorney

Consultant:

[Consultant's Legal Name],
a [Legal Form of Entity]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Two signatures of corporate officers required for corporations under Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.)

EXHIBIT A
APPROVED FEE SCHEDULE

EXHIBIT B
SCOPE OF SERVICES

EXHIBIT C
PROJECT TIMELINE